

REMARKS

This is a full and timely response to the Office Action mailed November 12, 2009, submitted concurrently with a one month extension of time to extend the due date for response to March 12, 2010.

By this Amendment, claims 1-20 have been amended to address the rejections under 35 U.S.C. §101 and §112 and to put the claims in better form under U.S. practice. Thus, claims 1-21 are currently pending in this application with claim 21 being withdrawn. Support for the claim amendments can be readily found variously throughout the specification and the original claims (see, for example, paragraph [0038] of the present Patent Application Publication No. 2004/0093252 A1). Thus, no new matter has been added by these amendments.

In view of these amendments, Applicant believes that all pending claims are in condition for allowance. Reexamination and reconsideration in light of the above amendments and the following remarks is respectfully requested.

Rejection under 35 U.S.C. §112

Claims 1-20 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection.

The Examiner states that the limitation "*the examination set*" in line 8 of claim 1 does not have sufficient antecedent basis (see page 3 of the Office Action). Applicant has amended claim 1 to recite "*an examination set*."

In addition, Applicant respectfully submits that claims 1-20 have also been amended to make it clear that the program of the present invention is directed to a software program and embodied on a computer readable medium, i.e., stored in computer memory (see paragraph [0044] of the present Patent Application Publication).

Thus, Applicant submits that claims 1-20, as amended, clearly point out and distinctly claim the subject matter which Applicant regards as the invention. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. §101

Claims 1-20 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverse this rejection.

However, in the interest of expediting the prosecution of the present application, Applicant has amended claims 1-20 to clarify that the software program of the present invention is embodied on a computer readable storage medium.

Accordingly, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. §103

Claims 1-20 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kameda et al. (U.S. Patent No. 5,923,018) in view of newly cited White et al. (U.S. Patent Application Publication No. 2004/0019501 A1). Applicant respectfully traverses this rejection.

To establish an obviousness rejection under 35 U.S.C. §103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007). Further, the Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Finally, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. *See in re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Here, in this case, Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness because the combined prior art of record fails to disclose or suggest all of

the claim limitations with particular emphasis on the limitations, *a function for creating an examination schedule to avoid overlapping in time between timing of the medication and the examination for each patient and timing of medication and examination for other patients, based on said information on contents of the examination and an order of examination and the waiting time.*

As stated in the previous response, the present invention is directed to scheduling for a nuclear medical examination apparatus from medication to examination. The present invention avoids overlapping in time between timing of medication and examination for each patient and timing of medication and examination for other patients, based on information fetched. In the present invention, it is the program itself which causes a computer to create and adjust the examination schedule for the nuclear medical examination apparatus to avoid overlap in time of timing of the medication and the examinations for each patient according to said fetching information (on said contents of the examination and said order of examinations), while maintaining fixed a waiting time from the medication to the examination set for each patient according to a type of examination (see paragraphs [0056], [0059], and [0069]-[0072] of the present Patent Application Publication No. 2004/0093252 A1).

The Examiner now concedes that Kameda et al. fails to disclose a function for creating an examination schedule based upon contents of the examination for each patient and an order of examination for each patient, and waiting time (see page 7 of the Office Action), and cites White et al. to cure this deficiency in Kameda et al.

White et al. is directed to a computer-assisted system for scheduling, tracking and providing the status of patient cases undergoing a medical testing process. The system includes a scheduling application program, a patient tracking application, and a patient status grid. The patient tracking application provides patient queues for each selected step in the testing process to prioritize patient cases and organize completion of multiple steps in the testing process as to each patient case (see Abstract of White et al.).

More specifically, White et al. discloses a system in which a user enters an input to open the patient scheduler 200, which opens a scheduler window displaying various fields to be completed by the user. The user enters exam information 204 and completes the patient name field 208. The system then queries whether the patient has an existing patient record match on the

system 212 and searches for an existing patient record matching the patient's name. If a record is found, the system displays a dialog box providing a link to the patient's name and asks whether the user wishes to accept this record 216. If no record is found or if a found record is not accepted, the user inputs the patient's social security number 220 and the system again searches for a match 224. If a record is found, the system displays a dialog box providing a link to the patient's name and asks whether the user wishes to accept this record 228. If no record is found or if a found record is not accepted, the user enters additional patient information requested by the system 232. The user then navigates the calendar display of the window to locate an appointment date and time acceptable to the patient 236 and then schedules an appointment 240 (see paragraph [0038] and Figure 2A of White et al.).

In contrast to the present invention, White et al. fails to disclose the system causing the computer to perform *a function for creating an examination schedule to avoid overlapping in time between timing of the medication and the examination for each patient and timing of medication and examination for other patients*. In White et al., the examination schedule is created by a user, not a computer. The system of White et al. merely stores and looks up patient records when information is inputted. Appointments are scheduled by a user on a calendar displayed by the system, but the system itself does not create the schedule. In other words, this scheduling system of White et al. creates a schedule only by a manual operation, i.e., inputting patients' dates and times of appointment considering available times for diagnosis on a day-to-day or hourly basis, and not automatically. Consequently, situations of diagnostic apparatus and doctors are taken into consideration. Thus, White et al. does not disclose the most important characteristic of claim 1 in the present application, which is "*said program causing said computer to perform...a function for creating an examination schedule to avoid overlapping in time between timing of medication and examination for each patient and timing of medication and examination for other patients, based on the information on contents of the examination and an order of examination and the waiting time.*"

In addition, claim 1 in the present application is directed to a nuclear medical examination scheduling program, which is different in technical field from Kameda et al. and White et al. The present invention can avoid overlapping of (1) the timing of the medication required for a nuclear medical examination to be carried out before the examination, (2) the examination between

patients, and (3) the examination itself, thereby readily improving the operating ratio of the nuclear medical examination apparatus. Further, the present invention makes the waiting time for each examination uniform. On the other hand, Kameda et al. and White et al. disclose scheduling programs for use in ordinary examinations at hospitals, which are irrelevant to the nuclear medical examination scheduling program to which the present invention is directed. Therefore, combined teachings of Kameda et al. and White et al. fail to teach or suggest all of the limitations of claim 1.

Also, the Examiner states that the recitation of *"to avoid overlapping in time between timing of the medication and examination for each patient"* is intended use (see page 7 of the Office Action). Therefore, the Examiner does not give this limitation patentable weight. However, this limitation is directed to a distinct feature of the program of the present invention which requires processing and comparing of data by the computer and thus, is not an intended use. Further, it is not a function performed by a user, but rather, it is a function that the program of the present invention causes the computer to perform.

In the present invention, the operator inputs the names of patients for desired days and then instructs a start of scheduling. The processing unit 13 refers to the examination schedule display/edit, patient information and study series information, and prepares schedules for the days selected (see paragraph [0056] of the present Patent Application Publication). More specifically, the processing unit 13 arranges examinations in respective patterns in a way to avoid overlapping in time between the timing of medication according to the information on the contents of examinations and the order of examinations in a way not to vary the waiting times of the respective patients (see paragraph [0059] of the present Patent Application Publication). Thus, the computer, which contains the processing unit 13, and not the user, creates the examination schedule.

In view of the above, claim 1 is allowable over the combined teachings of Kameda et al. and White et al. Claims 2-20 depend directly or indirectly from allowable claim 1 and, therefore, are allowable for at least for the same reasons that claim 1 is allowable.

Claim 2 recites *"said schedule for each patient is expressed by a pattern having a time span according to the type of examination, said pattern presenting the timing of the medication, the waiting time and the contents of the examination."* The Examiner points out that Kameda et al. discloses the claimed features in Figure 8; column 18, lines 9-31, (see page 8 of the Office Action).

However, Kameda et al. only discloses a *“table in which the medical care actions in each one month period are put in one frame 41 of the table and the columns are arranged over month as shown in FIG. 8. Other than one month, although a time unit such as 3 days, one week, one year or 10 years which are easily understood, can be preferable used here”* (see column 18, lines 17-23, of Kameda et al.). In other words, the table of Kameda et al. uses “an arbitrary time unit” and not a *time span according the type of examination* as recited in claim 2 (see column 18, lines 23-27 of Kameda et al.).

In addition, Figure 8 of Kameda et al. illustrates a table which is different from a graphic pattern having a time span according to the type of examination, presenting a schedule for each patient as defined in claim 2. Also, White et al. fails to cure this deficiency in the teachings of Kameda et al. Therefore, the combined teachings of Kameda et al. and White et al. fail to teach or suggest all of the limitations of claim 2. Therefore, Applicant respectfully submits that claim 2 is allowable.

Accordingly, withdrawal of the present prior art rejections is respectfully requested.

CONCLUSION

For the foregoing reasons, all the claims now pending in the present application are believed to be clearly patentable over the outstanding rejections. Accordingly, favorable reconsideration of the claims in light of the above remarks is courteously solicited. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

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Respectfully submitted,

By:  _____

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